

ELENA D. KNOBLAUCH
Claimant

STAPLES PRINTING LABEL COMPANY
Respondent

INDEMNITY INS. CO. OF N. AMERICA
Insurance Carrier

ORDER

Respondent and its insurance carrier (respondent) submitted a Motion to Stay to the Board on August 25, 2016. This case has been placed on the summary docket for disposition without oral argument. Kenton D. Wirth of Wichita, Kansas, appeared for claimant. Douglas C. Hobbs and Ryan D. Weltz of Wichita, Kansas, appeared for respondent.

Respondent requests the Board order a stay of payment of benefits pending the outcome of its appeal with the Kansas Court of Appeals. Respondent notes that a partial automatic stay of benefits was provided by K.S.A. 44-556, prior to the Court of Appeals finding a stay of benefits during the pendency of appellate review was not automatic.¹ Respondent argues, “The subject Motion should be granted, as there is no evidence that historically, the granting of the ‘automatic stay’ caused any significant problems in the administration of claims and appeals.”² Further, respondent argues:

The pending appeal before the Court of Appeals will involve whether claimant sustained a compensable injury to a non-scheduled member and the nature and extent of her disability, if any. If the Board does not grant the subject Motion, success of the appeal will mean that the Kansas Workers Compensation Fund will be obligated to make [respondent] whole for any overpayment of benefits made

¹ See *Nuessen v. Sutherlands*, 51 Kan. App. 2d 616, 352 P.3d 587 (2015).

² Respondent's Brief (filed Sept. 8, 2016) at 2.

during the pendency of appeal, pursuant to K.S.A. 44-556 and/or K.S.A. 44-534a(b). There is no reason to burden the Kansas Workers Compensation Fund with the repayment of benefits to [respondent], should the appeal succeed. The more economical and fair approach is to allow [respondent] to complete its appeal of right before having to pay any benefits which are disputed under the Award.³

Claimant argues there is no valid reason to stay the payment of awarded benefits. Claimant notes respondent must show it is likely to prevail on appeal, it will suffer irreparable injury, the stay will not harm other parties, and the stay poses no serious threat to the public health, safety or welfare. Claimant contends respondent cannot show it will likely prevail on its appeal to the Court of Appeals because the issue of claimant's nature and extent of injury is a question of fact. Additionally, claimant argues respondent will not suffer irreparable injury, as Kansas law provides reimbursement by the Kansas Workers Compensation Fund. Claimant maintains a stay of payment of benefits would cause her economic hardship; she is unemployed due to her injury, has no earnings, and is receiving no workers compensation benefits.

FINDINGS OF FACT AND PRINCIPLES OF LAW

On January 29, 2016, Administrative Law Judge (ALJ) Ali Marchant entered an Award finding claimant sustained a 13 percent permanent partial impairment to the body as a whole as a result of her April 9, 2010, work-related accident. ALJ Marchant determined claimant had a 22.42 percent work disability through January 13, 2015, and a 62 percent work disability thereafter. Respondent appealed to the Board, which affirmed the ALJ's Award on July 20, 2016.

Respondent appealed the Board's decision to the Court of Appeals on August 18, 2016, before filing a Motion to Stay with the Board on August 25, 2016.

K.S.A. 44-556(b) provides, in part:

Commencement of an action for review by the court of appeals shall not stay the payment of compensation due for the ten-week period next preceding the board's decision and for the period of time after the board's decision and prior to the decision of the court of appeals on review.

K.S.A. 77-616 provides, in part:

(a) Unless precluded by law, the agency may grant a stay on appropriate terms or other temporary remedies during the pendency of judicial review.

³ Respondent's Brief (filed Sept. 8, 2016) at 4.

(b) A party may file a motion in the reviewing court, during the pendency of judicial review, seeking interlocutory review of the agency's action on an application for stay or other temporary remedies.

ANALYSIS

Compensation benefits are no longer automatically stayed during the pendency of an appeal under K.S.A. 44-556.⁴ If a party desires to stay the Board's decision on appeal, it may request a stay order from either the Board or from the Court of Appeals pursuant to K.S.A. 77-616.⁵ The decision to grant a stay is at the discretion of the Board.⁶ It is the declared public policy of the state that compensation awards shall be promptly paid.⁷

Respondent's sole argument in support of its motion for a stay is that failure to grant a stay will burden the Kansas Workers Compensation Fund. The Board finds this to be insufficient justification. The legislature specifically contemplated that the Fund may need to reimburse employers and insurance carriers pursuant to K.S.A. 44-556.

WHEREFORE, it is the finding, decision and order of the Board that respondent's Motion to Stay dated August 25, 2016, is denied.

IT IS SO ORDERED.

Dated this _____ day of October, 2016.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

⁴ See *Nuessen v. Sutherlands*, 51 Kan. App. 2d 616, 623, 352 P.3d 587 (2015).

⁵ *Id.*

⁶ See *Evans v. Cessna Aircraft Co.*, No. 1,062,821, 2016 WL 2619517 (Kan. WCAB Apr. 26, 2016).

⁷ See *Acosta v. Nat'l Beef Packing Co.*, 273 Kan. 385, 398, 44 P.3d 330 (2002).

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Hon. Ali Marchant, Administrative Law Judge